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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FM EXAMINERS
In re Application of

WILBURN INDUSTRIES, INC.

Application for Construction
Permit for a new FM station,
Channel 280A, Westerville, Ohio

AUDIO SERVICES
DIVISION

File No. BPH-911230MC

File

To: Chief, Mass Media Bureau

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SEP 24 1992

OPPOSITION TO INFORMAL OBJECTION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Wilburn Industries, Inc. ("Wilburn"), by its attorneys,
hereby submits its Opposition to the "Informal Objection" filed
by WTTF, Inc. on September 11, 1992, stating in support thereof
as follows:

Wilburn is an applicant to construct an FM station in
Westerville, Ohio, to replace WBBY-FM, after the renewal
application of that station was denied by the Commission. WBBY-
FM was fully spaced to first adjacent channel station WTTF-FM,
Tiffin, Ohio, licensed to WTTF, Inc. when those stations were

coordinates of that grandfathered allotment.¹ WTTF, Inc. predicates its objection on the grounds that (a) Wilburn could have specified a site which is fully spaced under the 1989 rules and (b) "grant of Wilburn's application may limit WTTF's ability to relocate its tower site or modify its facilities."

WTTF, Inc.'s submission must be dismissed or denied on a plethora of grounds. As an initial matter, Wilburn's application was accepted for filing and public notice thereof was released by the Commission on February 21, 1992. WTTF, Inc. offers no reason, and no legitimate reason is apparent, why WTTF, Inc. submitted its objection almost a full seven months later, at a time which necessarily would disrupt the further, orderly consideration of an application listed on that public notice.

Further, WTTF, Inc, offers no argument and relies on no precedent to support its specious allegation that Wilburn's application should be dismissed. Reference to Wilburn's own prior submissions with respect to this matter demonstrate, however, that logic, Commission policy and Commission precedent

¹ Wilburn also proposes to use the existing WBBY-FM transmission facilities pursuant to an agreement with the prior licensee.

all clearly support the proposition that Wilburn's application was properly accepted for filing by the Mass Media Bureau.²

Moreover, Wilburn's application will not create a new short spacing with respect to WTTF-FM. Not only was WTTF-FM short spaced to WBBY-FM in the past, WTTF-FM presently remains short spaced to the Westerville allotment (whose reference coordinates remain the WBBY-FM transmitter site). Such short spacing would be eliminated only if a new station were constructed and began operating from another site -- an inherently indefinite and speculative possibility at this time. WTTF, Inc. therefore cannot rely at this point on the fortuity that the licensee which previously operated a station on the Westerville allotment terminated its operations.

Finally, WTTF, Inc. is not an interested party to the Wilburn application and will suffer no prejudice as a result of the grant of such application. Thus, WTTF, Inc. has not filed an application to modify its facilities, nor does it presently contemplate any modification -- much less one which might be affected by the continued operation of a station at the WBBY-FM transmitter site. Rather, WTTF, Inc. suggests only that it may wish to change its transmitter site (or make some other undefined

² This was demonstrated in Wilburn's Opposition to Petition to Deny and Dismiss, filed April 9, 1992; Supplement to Opposition, filed April 14, 1992; and Opposition to Supplement, filed August 6, 1992, with respect to equally fatuous arguments by Ohio Radio Associates, Inc.

modification) at some point in the future and that its ability to